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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

AETNA LIFE INSURANCE COMPANY and
AETNA HEALTH MANAGEMENT,
Petitioners,

v.

STUART CIRCLE HOSPITAL CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

RESPONDENT'S OPPOSITION TO MOTIONS FOR LEAVE TO FILE BRIEFS *AMICUS CURIAE*

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Respondent's Opposition to Motions for Leave to File Briefs *Amicus Curiae*

Respondent Stuart Circle Hospital Corporation ("Stuart Circle") opposes the Motions for leave to file briefs *amicus curiae* in support of the Petition for writ of certiorari submitted by Aetna Life Insurance Company and Aetna Health Management (collectively, "Aetna") and, pursuant to Rule 21.4, respectfully

shows the Court the following reasons why the Motions should be denied.[1]

ARGUMENT

1. The proposed *amici* include two members of Aetna's newly formed insurance lobbying group (Metropolitan, Travelers); two insurance industry trade associations (ACLI, HIAA); three health care groups whose members include insurance companies (GHAA, AAPPA, AMCRA); a health benefit insurer (BC/BS NCA); a business group from Connecticut, where Aetna and many other insurers are domiciled (CBIA); and two employee benefit groups whose plan sponsors purchase insurance (APWWP, NCCMP). Only the last two entities arguably meet the traditional definition of a "friend of the court," as opposed to an advocate of partisan interests. *See New England Patriots Football Club, Inc. v. University of Colorado*, 592 F.2d 1196, 1198 n.3 (1st Cir. 1979).

Regardless, the briefs tendered for filing by the proposed *amici*, without exception, merely restate points and authorities already fully aired by Aetna in its

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[1]Motions have been filed on behalf of these entities:

American Council of Life Insurance ("ACLI")
Association of Private Pension and Welfare Benefit Plans ("APWWP")
Connecticut Business and Industry Ass'n ("CBIA")
Group Health Ass'n of America, Inc.("GHAA")
Health Insurance Ass'n of America ("HIAA"), American Ass'n of Preferred Provider Ass'ns ("AAPPA"), and American Managed Care and Review Ass'n ("AMCRA")
Metropolitan Life Insurance Co. ("Metropolitan")
National Coordinating Committee for Multiemployer Plans ("NCCMP")
The Travelers Insurance Co. ("Travelers") and Blue Cross and Blue Shield of the National Capital Area ("BC/BS NCA")

Petition; they do not independently "bring[] relevant matter to the attention of the Court... ." Rule 37.1. This kind of redundant advocacy is disfavored because it "simply burdens the staff and facilities of the Court...." *Id.*

2. In arguing that they should be granted leave to file briefs in support of the Petition, the proposed *amici* misconstrue the plain meaning and exaggerate the effect of the Virginia statute at issue in this case. Like Aetna, the *amici* erroneously contend that "[t]he Virginia law... bars insurers from excluding any provider willing and able to meet the PPO's membership requirements, regardless of need." Motion of NCCMP at p. 3;[2] Pet. at 4. The Virginia statute mandates no such thing; in pertinent part, it permits even "willing" providers to be excluded if the insurer establishes terms and conditions which do not "discriminate unreasonably against or among such health care providers." Va. Code § 38.2-3407(B). Whether an insurer such as Aetna has satisfied its obligations under the statute is to be decided on a case-by-case basis. The effect of the Fourth Circuit's decision below is simply to allow Stuart Circle's state law claim to be decided on the merits, as it should be, subject to normal review by an appeals court. The views of the proposed *amici* flow from either a basic misunderstanding of this case or a design to overstate its true significance.

3. The Fourth Circuit in this case found that the Virginia statute was enacted to protect policyholders from overreaching by insurers. App. 10a, 12a. It is noteworthy, but not surprising, that the proposed *amici* never once take notice of this critical aspect of

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[2] *See, e.g.*, Motion of APPWP at p. 2 ("By requiring PPOs to include 'any willing' medical provider in the panel,....").

the decision below. The commercial health insurance industry and its allies for many years have resisted the consumer protection initiatives of local insurance regulators on the theory that ERISA trumps the States' authority in this area.[3] In requesting the Court to hear this case, the proposed *amici* embrace a shop-worn public policy argument that this Court rejected nearly a decade ago in *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985), and which Aetna erroneously attempts to resurrect here. Simply put, Aetna and its *amici* argue that laws like Va. Code § 38.2-3407 should be pre-empted by ERISA because they indirectly affect benefit plans which purchase insurance by imposing regulatory requirements upon insurers.[4] The Court in *Metropolitan Life*, however, held that Congress intended ERISA's insurance saving

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[3]In its brief to this Court in support of the (unsuccessful) insurance petitioner in *Metropolitan Life*, *infra*, one of the proposed *amici* here stated that

> ". . . HIAA and its member companies have consistently opposed the enactment of state mandated health benefit laws on the grounds that these laws restrict design flexibility, inhibit uniformity in benefit packages, increase costs to employers and employees and promote self-funding of benefit plans."

Brief *Amicus Curiae* of Health Insurance Association of America in Support of Jurisdictional Statements (Nos. 84-325 and 84-356, filed Sept. 29, 1984), at 3.

[4]*See, e.g.*, Pet. at 10-15; Brief of APPWP at 13 ("This Court therefore should give full effect to ERISA's broad preemption provision to relieve plans and plan sponsors from this form of costly and inefficient state interference.").

clause to operate broadly to preserve the States' lawmaking power over insurance, even if the effect is indirectly to regulate plans which purchase insurance. *Metropolitan Life*, 471 U.S. at 747. The Court explicitly stated that if national plans enter into local markets to purchase insurance, any "disuniformities" created by variance among state laws

> ...are the inevitable result of the congressional decision to "save" local insurance regulation. Arguments as to the wisdom of these policy choices must be directed at Congress. (*Id.*).

The public policy argument of the proposed *amici* thus has no helpful or persuasive value in this or any other judicial forum. As the Fourth Circuit aptly said, the wisdom of the Virginia statute "is a concern of the legislature, not the judiciary." App. 12a.

CONCLUSION

The Motions for leave to file briefs *amicus curiae* should be denied.

Respectfully submitted,

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